



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTI/153279

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 04, 2013, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 26, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and whether the agency properly issued a tax intercept to the Petitioner for an unpaid debt for excess public assistance in the amount of \$1,711.95.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Tameika Terrell

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On May 13, 2013, the agency issued a Child Care Overpayment Notification to the Petitioner informing him that the agency intends to recover an overissuance of child care benefits in the amount of \$1,705.05 for the period of November 11, 2012 – December 31, 2012. The notice informed the Petitioner of the right to a hearing on the issue by filing a hearing request with the Division of Hearings and Appeals within 45 days.
3. On June 4, 2013, the agency issued a repayment agreement to the Petitioner for the child care overpayment.
4. On July 2, 2013, August 2, 2013 and September 4, 2013, the agency issued dunning notices to the Petitioner regarding the overpayment.
5. On October 11, 2013, the agency issued a notice of state tax intercept to the Petitioner.
6. On November 4, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of Child Care Benefits and Medical Assistance payments made incorrectly.

The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

In this case, the Petitioner testified that he disagrees with the overpayment issued by DCF. He stated that he did receive the notice of the overpayment in May, 2013 but did not file an appeal because of an upcoming surgery in July, 2013. He also testified that he came to the agency to discuss the overpayment in June, 2013 and brought documentation. He believed that was sufficient to resolve the matter.

The Petitioner had a prior opportunity for a hearing on the issue of the overpayment. He did not file an appeal of that issue within 45 days as required by law. Therefore, I have no jurisdiction to rule on the merits of the overpayment. I have jurisdiction only over the issue of whether the agency properly issued the tax intercept to enforce collection of the overpayment.

I conclude that the evidence demonstrates the agency followed proper procedures in issuing the tax intercept to the Petitioner.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal with regard to the overpayment of child care benefits is not timely. The agency properly issued a tax intercept to the Petitioner in the amount of \$1,711.95 for an overissuance of child care benefits.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

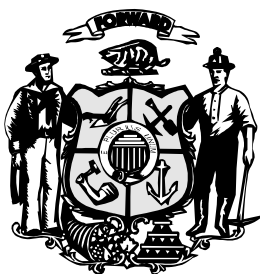
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of February, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 19, 2014.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit